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7 Attorneys for Defendant/Counter-Plaintiff,
8 KEATING DENTAL ARTS, INC.

9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 SOUTHERN DIVISION

13 JAMES R. GLIDEWELL DENTAL
CEAMICS, INC. dba GLIDEWELL
14 LABORATORIES,

15 Plaintiff,

16 v.

17 KEATING DENTAL ARTS, INC.

18 Defendant.

19 AND RELATED COUNTERCLAIMS.
20
21

) Civil Action No.
) SACV11-01309-DOC(ANx)

) **DECLARATION OF LORI**
) **BOATRIGHT IN SUPPORT**
) **OF KEATING DENTAL**
) **ARTS, INC.'S MOTIONS**
) **FOR SUMMARY**
) **JUDGMENT CANCELING**
) **GLIDEWELL'S**
) **TRADEMARK**
) **REGISTRATION AND OF**
) **NONINFRINGEMENT OF**
) **GLIDEWELL'S BRUXZIR®**
) **TRADEMARK**

) Honorable David O. Carter

1 I, Lori Boatright, hereby declare as follows:

2 I am the Chair of the Trademark Practice Group at the intellectual
3 property law firm Blakely Sokoloff Taylor & Zafman, LLP (“BSTZ”). I have
4 personal knowledge of the matters set forth herein. If called upon to testify, I
5 could and would testify competently to them.

6 1. Attached hereto as Exhibit A is a true and correct copy of my
7 Rebuttal Report to the Report of David J. Franklyn, which I signed on October
8 15, 2012 (“Rebuttal Report”).

9 2. As stated in my Rebuttal Report (page 1 lines 6-9; page 2 lines 1-
10 3), I joined BSTZ in 1988 and became a partner in 1993. The Trademark
11 Practice Group was founded in 1996 and I have been the Chair since inception
12 of this group. I estimate I have filed/prosecuted roughly 2,500-3,000 trademark
13 applications while at BSTZ.

14 3. As stated in my Rebuttal Report (page 2 lines 4-21), prior to
15 joining BSTZ, I was a Trademark Examining Attorney from January 1987 to
16 November 1988. I estimate that I examined over 2,500 trademark applications
17 during that period.

18 4. As stated in my Rebuttal Report (page 17 lines 2-4), the U.S. Patent
19 and Trademark Office requires all Trademark Examining Attorneys to follow
20 the Trademark Manual of Examining Procedure (“TMEP”) in the examination
21 of trademark applications.

22 5. Attached hereto as Exhibit B is a true and correct copy of the 24
23 page printout from the records of the U.S. Patent and Trademark Office of the
24 file history of Registration No. 3,739,663 (Application Serial No. 77/761,757)
25 for the mark BRUXZIR owned by James R. Glidewell Dental Ceramics, Inc.
26 dba Glidewell Laboratories (“BRUXZIR File History”) which I had previously
27 reviewed and relied on for my Rebuttal Report.

28 6. As I stated in my Rebuttal Report (page 12 lines 8-11; page 18

1 lines 4-6), it is clear from the BRUXZIR File History that the Trademark
2 Examining Attorney did not conduct a web search, nor make any inquiry of
3 Glidewell of the meaning or pronunciation or the BRUXZIR mark.

4 7. As I stated in my Rebuttal Report (page 8 lines 21-23), a review of
5 Glidewell's own website informs the public that the BRUXZIR products are
6 designed for "bruxers."

7 8. As I stated in my Rebuttal Report (page 16 lines 12-14), a web
8 search similar to "crowns designed for bruxers" should have been performed by
9 the Trademark Examining Attorney for the BRUXZIR mark.

10 9. As I also stated in my Rebuttal Report (page 7 lines 23-28; page 8
11 lines 1-20), a web search using the Google search engine of "bruxer" shows
12 32,800 search "results." This and other Google searches I conducted showed
13 findings relevant to dentists as well as to general consumers.

14 10. As I stated in my Rebuttal Report (page 14 lines 5-16; page 17
15 lines 4-17), the Trademark Examining Attorney for the BRUXZIR mark should
16 have asked Glidewell if the mark had any particular meaning in relation to the
17 goods or in the relevant trade or industry.

18 11. As I stated in my Rebuttal Report (page 17 lines 8-10), the TMEP
19 states that it may be necessary for a Trademark Examining Attorney to request
20 additional information from the applicant to properly examine the application.

21 12. As I also stated in my Rebuttal Report (page 17 lines 10-17), the
22 TMEP states that a Trademark Examining Attorney may request additional
23 explanation or materials to clarify the meaning of the mark.

24 13. As I stated in my Rebuttal Report (page 18 lines 4-6), there was no
25 indication that the Trademark Examining Attorney conducted any follow-up
26 activity.

27 14. As I stated in my Rebuttal Report (page 10 lines 3-16), based on
28 my review of the audio material on the Glidewell website and other Glidewell

1 material I reviewed on YouTube, Glidewell pronounces the mark BRUXZIR as
2 "bruxer."

3 15. As I also stated in my Rebuttal Report (page 13 lines 21-28; page
4 14 lines 1-4), had the Trademark Examining Attorney known that Glidewell
5 pronounced the mark BRUXZIR as "bruxer," the Trademark Examining
6 Attorney would have denied registration of the BRUXZIR mark.

7 16. Attached hereto as Exhibit C is a true and correct copy of the 33
8 page printout from the records of the U.S. Patent and Trademark Office of the
9 file history of Application Serial No. 85/287,029 for the KDZ BRUXER
10 (stylized mark) with the term "bruxer" disclaimed owned by Keating Dental
11 Art, Inc. ("KDZ BRUXER File History") which I had previously reviewed and
12 relied on for my Rebuttal Report (page 6 lines 8-15):

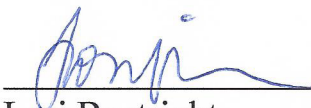


17 17. As I stated in my Rebuttal Report (page 17 lines 19-23), Keating
18 Dental Arts, Inc. the term "bruxer" was disclaimed, and Keating Dental Arts,
19 Inc. made no claim as to trademark rights therein to this term.

20 I declare under penalty of perjury under the laws of the United States of
21 America that the foregoing is true and correct.

22 Executed November 16, 2012, in San Diego, California.

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24
25

A handwritten signature in blue ink, appearing to read "Lori Boatright", is written over a horizontal line.

Lori Boatright

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